

Message Text

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EUR - MR. ARMITAGE

EUR- MR. ANDREWS

L - MR. LEIGH(SUB)

L/C - MR. KWIA TEK

JUSTICE - MR. NORTON

TREASURY - MR. DIR

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FM SECSTATE WASHDC

TO AMEMBASSY BRUSSELS PRIORITY

AMEMBASSY LONDON

AMEMBASSY PARIS

INFO AMEMBASSY PRAGUE

C O N F I D E N T I A L STATE 278776

E.O. 11652: GDS

TAGS: EFIN, OGEN, BE, CZ

SUBJECT:CLASS SUIT INVOLVING CZECH GOLD CLAIM BEFORE
TRIPARTITE (U.S., U.K. AND FRANCE) GOLD COMMISSION

FOR BRUSSELS FOR TRIPARTITE GOLD COMMISSIONER

1. DEPT REQUESTED BRITISH AND FRENCH EMBOFFS ON NOV. 24
URGENTLY TO OBTAIN THE CONCURRENCE AND REQUEST OF THEIR
GOVTS FOR SUBMISSION OF SUGGESTION OF SOVEREIGN IMMUNITY
TO U.S. COURT, AS DESCRIBED BELOW. EMBOFFS WERE HANDED
FULL BACKGROUND DATA. AMERICAN EMBASSIES LONDON AND
PARIS REQUESTED TO FOLLOW UP MATTER WITH FOREIGN OFFICES
PROMPTLY AND URGE EXPEDITIOUS FAVORABLE ACTION. U.S.
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TRIPARTITE COMMISSIONER BRUSSELS REQUESTED TO TAKE SIMILAR
ACTION WITH BRITISH AND FRENCH COLLEAGUES ON TRIPARTITE
COMMISSION.

2. WE ADVISED BRITISH AND FRENCH EMBOFFS THAT A CLASS SUIT INVOLVING THE CZECH GOLD CLAIM HAS BEEN INSTITUTED BY TWO U.S. CITIZENS (WHO HAVE AWARDS FOR PROPERTY NATIONALIZED BY CZECHOSLOVAKIA) FOR DECLARATORY AND INJUNCTIVE RELIEF AGAINST CERTAIN OFFICIALS OF THE U.S. GOVERNMENT (SECRETARY OF STATE, SECRETARY OF THE TREASURY, CHAIRMAN AND BOARD OF GOVERNORS OF THE FEDERAL RESERVE BANK OF WASHINGTON) AND AGAINST THE FEDERAL RESERVE BANK OF NEW YORK. THE SUIT INVOLVES 18.4 METRIC TONS OF GOLD ON DEPOSIT IN ACCOUNTS OF THE THREE GOVERNMENTS IN THE FEDERAL RESERVE BANK OF NEW YORK AND THE BANK OF ENGLAND, LONDON, BUT THE BASIC EMPHASIS OF THE SUIT IS TO REQUIRE THE NAMED PUBLIC OFFICIALS TO TAKE ACTION TO UTILIZE AT LEAST THE 8.8 METRIC TONS IN NEW YORK FOR THE SATISFACTION OF THE CLAIMS OF THE CLAIMANTS. (THE 18.4 TONS OF GOLD IN NEW YORK AND LONDON IS THE GOLD PROVISIONALLY PLANNED FOR DELIVERY TO CZECHOSLOVAKIA IF AND WHEN THE CZECH GOLD AWARD AND DELIVERY ORDERS SHOULD BE AGREED, SIGNED AND DELIVERED BY REPRESENTATIVES OF THE THREE GOVERNMENTS.)

3. THE COMPLAINT DESCRIBES CLAIMANT CLASS AS MORE THAN 2,600 CLAIMANTS HAVING AWARDS FROM THE U.S. FOREIGN SETTLEMENT COMMISSION FOR THE NATIONALIZATION OF THEIR PROPERTY IN CZECHOSLOVAKIA, THE AWARDS AMOUNT TO MORE THAN ONE HUNDRED FIVE MILLION DOLLARS STILL UNSATISFIED, INCLUDING INTEREST.

4. WE ADVISED THE BRITISH AND FRENCH REPRESENTATIVES THAT WE REGRETTED THE INSTITUTION OF THE LAWSUIT AS AN ADDITIONAL COMPLICATION IN THE HANDLING OF THE CZECH GOLD CLAIM. THE COMPLAINT REVEALS THAT THE PLAINTIFFS HAD OBTAINED INFORMATION AS TO THE LOCATION OF THE GOLD FROM CONGRESSIONAL SOURCES (THE DEPARTMENT HAD SUPPLIED SUCH INFORMATION IN A LETTER CLASSIFIED "CONFIDENTIAL") AND THIS INFORMATION HAS EVIDENTLY SERVED AS THE BASIS FOR BRINGING THE SUIT. WHILE THERE IS ALSO THE BARRIER OF THE RIDER ON THE U.S. TRADE REFORM ACT OF 1974 (WHICH CONFIDENTIAL

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PROVIDES THAT THE U.S. GOVERNMENT IS NOT TO RELEASE ANY GOLD IN THE GOLD POOL TO CZECHOSLOVAKIA UNTIL A NEW CLAIMS AGREEMENT WITH CZECHOSLOVAKIA HAS BEEN NEGOTIATED AND APPROVED BY THE CONGRESS), THE DEPARTMENT IS OF COURSE MOST ANXIOUS TO ELIMINATE THE LAWSUIT SO AS TO CLEAR THE WAY FOR AN ULTIMATE SETTLEMENT WITH THE CZECHS.

5. THE DEPARTMENT HOPES TO OBTAIN THE FAVORABLE DISPOSITION OF THE CASE IN A SUMMARY WAY. THUS IT IS PLANNED TO REQUEST THE DISMISSAL OF THE COMPLAINT ON THE BASIS OF THE DOCTRINE OF SOVEREIGN IMMUNITY. WITH RESPECT TO THE OFFICIALS WHO HAVE BEEN SUED, WE WILL BE ABLE TO INVOKE THE RULE OF LAW THAT SUITS AGAINST OFFICIALS,

EVEN IN THEIR INDIVIDUAL CAPACITIES, ARE TO BE CONSIDERED SUITS AGAINST THE GOVERNMENT, AND THEREFORE SUBJECT TO THE DEFENSE OF SOVEREIGN IMMUNITY, IF THE SUIT SEEKS TO COMPEL THE PERFORMANCE OF DISCRETIONARY GOVERNMENTAL FUNCTIONS. WITH RESPECT TO THE PORTION OF THE SUIT AGAINST THE FEDERAL RESERVE BANK OF NEW YORK, SINCE THE BANK IS NOT A GOVERNMENTAL AGENCY BUT AN INDEPENDENT

CORPORATION, IT IS NOT IN A POSITION TO INVOKE THE DOCTRINE OF SOVEREIGN IMMUNITY. IT IS DEEMED NECESSARY UNDER OUR PRACTICE, IN ORDER TO DISPOSE OF THIS PORTION OF THE LITIGATION, FOR THE DEPARTMENT OF STATE TO SUBMIT A "SUGGESTION OF IMMUNITY" AT THE REQUEST OF THE U.K. AND FRANCE WITH RESPECT TO THE GOLD INVOLVED IN THE LITIGATION. THE U.S. JUDICIAL PRECEDENTS ARE CLEAR THAT SUCH A "SUGGESTION OF IMMUNITY" WILL BE CONSIDERED BINDING ON U.S. COURTS, THE RATIONALE BEING THAT THE COURTS WILL ACT SO AS NOT TO INTERFERE WITH THE CONDUCT OF THE FOREIGN RELATIONS OF THE GOVERNMENT WHERE, IN THE VIEW OF THE STATE DEPARTMENT, ACCORDING SOVEREIGN IMMUNITY AT THE REQUEST OF FOREIGN GOVERNMENTS IS JUSTIFIED.

6. THE DEPARTMENT THEREFORE PROPOSES, WITH THE CONCURRENCE AND AT THE REQUEST OF THE U.K. AND FRENCH GOVERNMENTS, TO SUBMIT A "SUGGESTION OF IMMUNITY" TO THE COURT. THE SUGGESTION WOULD BE SENT IN A LETTER TO THE U.S. ATTORNEY GENERAL FOR TRANSMISSION TO THE COURT AND THE SUGGESTION WOULD BE WORDED IN ITS OPERATIVE PART AS FOLLOWS:
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A. THE DEPARTMENT OF STATE HAS BEEN INFORMED BY THE EMBASSIES OF THE UNITED KINGDOM AND FRANCE, ON BEHALF OF THEIR GOVERNMENTS: THAT THE GOLD INVOLVED IN THE ACTION IS HELD BY THE GOVERNMENTS OF THE UNITED KINGDOM, FRANCE AND THE U.S. IN PURSUANCE OF THEIR SOVEREIGN GOVERNMENTAL FUNCTIONS AND IN IMPLEMENTATION OF AN INTERNATIONAL OBLIGATION, IN ACCOUNTS IN THE FEDERAL RESERVE BANK OF NEW YORK AND THE BANK OF ENGLAND, LONDON, FOR THE PURPOSES OF CARRYING OUT PART III OF THE PARIS REPARATION AGREEMENT OF JANUARY 24, 1946, AND IS CONTROLLED BY THE THREE GOVERNMENTS; AND THAT THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF FRANCE REQUEST THAT THE GOLD BE GRANTED IMMUNITY FROM THE JURISDICTION OF THE U.S. COURTS.

B. THE DEPARTMENT OF STATE RECOGNIZES AND ALLOWS THE IMMUNITY OF THE GOLD FROM THE JURISDICTION OF THE U.S. COURTS FOR THE PURPOSE OF ATTACHMENT, SUIT OR ANY OTHER LEGAL PROCESS IN THE ACTION.

C. THE DEPARTMENT WOULD BE GRATEFUL TO YOU (ATTORNEY GENERAL) IF YOU WOULD-CAUSE AN APPROPRIATE SUGGESTION OF

IMMUNITY TO BE FILED WITH THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

7. THE SUGGESTION ABOVE IS MODELED AFTER THE ONE ISSUED IN THE RECENT CASE OF SPACIL V. CROWE, 489 F.2D 614 (5TH CIR. 1974) (WHICH HAS GENERAL INFORMATION ON THE SUGGESTION OF IMMUNITY). IN THAT CASE, IN COMPLIANCE WITH THE REQUEST, THE LOCAL U.S. ATTORNEY, AT THE DIRECTION OF THE ATTORNEY GENERAL, SUBMITTED THE DEPARTMENT'S SUGGESTION OF IMMUNITY TO THE COURT STATING (P. 616) "(THE ISSUE OF IMMUNITY) ARISES IN CONNECTION WITH THE DETERMINATION REACHED BY THE EXECUTIVE BRANCH OF THE GOVERNMENT OF THE UNITED STATES IN THE IMPLEMENTATION OF ITS FOREIGN POLICY AND IN THE CONDUCT OF ITS INTERNATIONAL RELATIONS, WHICH DETERMINATION SHOULD BE GIVEN EFFECT BY THE COURT."

8. IT SHOULD BE NOTED THAT THE PRESENT CASE HAS CERTAIN SIMILARITIES TO THE CASE OF DOLFUSS MIEG V. BANK OF CONFIDENTIAL

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ENGLAND, WHICH WAS IN THE BRITISH COURTS FROM 1949 TO 1952 AND WENT TO THE HOUSE OF LORDS FOR FINAL DECISION. IN THAT CASE A CLAIMANT SUED TO REACH GOLD IN THE GOLD POOL HELD IN THE BANK OF ENGLAND BY THE THREE GOVERNMENTS. THE UNITED KINGDOM GOVERNMENT THERE REQUESTED AND OBTAINED AUTHORIZATION FROM THE U.S. AND FRENCH GOVERNMENTS FOR THE UNITED KINGDOM ATTORNEY GENERAL TO INTERVENE IN THE LITIGATION ON BEHALF OF THE GOVERNMENTS OF THE UNITED STATES AND FRANCE AND, IN ACCORDANCE WITH BRITISH PROCEDURES, PLEAD SPECIALLY THE SOVEREIGN IMMUNITY OF THE U.S. AND FRENCH GOVERNMENTS IN ORDER TO GET THE SUIT DISMISSED. UNDER U.S. PRACTICE THE EFFECTIVE WAY TO OBTAIN THE DISMISSAL OF THE SUIT AT THE THRESHOLD WOULD BE THE "SUGGESTION OF IMMUNITY", AS DESCRIBED ABOVE. IT SHOULD BE NOTED THIS PROCEDURE WILL NOT INVOLVE ANY ADMISSION OF ANY OF THE ALLEGATIONS IN THE COMPLAINT AND THE NON-ADMISSION OF ANY ALLEGATIONS WILL BE POINTED OUT IN ANY SUPPORTING BRIEF. WHILE THE SUGGESTION IS NEEDED FOR THE GOLD IN THE FEDERAL RESERVE IN NEW YORK, IT IS BELIEVED THE SUGGESTION MAY BE HELPFUL IF IT ALSO COVERS THE GOLD IN THE BANK OF ENGLAND.

9. WE REQUESTED THE U.K. AND FRENCH REPRESENTATIVES TO CONVEY THE ABOVE VIEWS TO THEIR GOVERNMENTS AND GAVE THEM COPIES OF THE AMENDED COMPLAINT, THE SPACIL DECISION, THE DRAFT LETTER OF THE DEPARTMENT TO THE ATTORNEY GENERAL CONSTITUTING THE SUGGESTION OF IMMUNITY, AND "TALKING POINTS" WHICH HAD BEEN PREPARED FOR THE MEETING. WE STATED THAT THE MATTER WAS OF SOME URGENCY. WE HAVE RECEIVED AN EXTENSION UNTIL LATE DECEMBER FROM THE COURT FOR OUR RESPONSE, BUT WE HOPED THAT THE U.K. AND FRANCE WOULD BE ABLE TO GIVE THEIR CONCURRENCES TO THE LETTER

ON IMMUNITY WITHIN A SHORT PERIOD SINCE IT IS NECESSARY
FOR THE DEPARTMENT TO COORDINATE ANY ACTION ON THE CASE
WITH THE DEPARTMENT OF JUSTICE AND THE OTHER AGENCIES OF
THE GOVERNMENT AND WITH THE FEDERAL RESERVE BANK IN NEW
YORK.

10. WE ALSO ADVISED THE BRITISH AND FRENCH REPRESENTATIVES
THAT WE WERE REQUESTING THE U.S. COMMISSIONER TO PROVIDE
COPIES OF THE SAME DOCUMENTS TO THE U.K. AND FRENCH
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COMMISSIONERS IN BRUSSELS AND ALSO TO PROVIDE THEM WITH
EXPLANATORY COMMENTS. THE DOCUMENTS HAVE BEEN POUCHED
TO BRUSSELS AND AT THE TIME OF TURNING THEM OVER, THE U.S.
COMMISSIONER IS AUTHORIZED TO PROVIDE SUCH COMMENTS AS ARE
DEEMED ADVISABLE, USING THE MATERIAL IN THE PRESENT
TELEGRAM. INGERSOLL

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